



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1995

Ms. Deborah L. Churchill
General Counsel
Texas Department of Protective
and Regulatory Services
P.O. Box 149030, E-654
Austin, Texas 78714-9030

OR95-971

Dear Ms. Churchill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34171.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for certain records that you contend may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. Specifically, you have submitted to this office as responsive to the open records request records of home inspections of the Lappe foster home that pertain substantially to pending litigation involving the termination of certain individuals' parental rights.¹

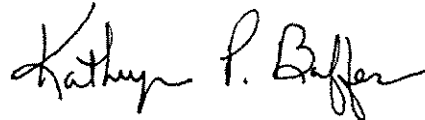
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

¹Because you have not submitted to this office any other records, we assume the department intends to release to the requestor all other records pertaining to the Lappe foster home as well as all of the other records he requested.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a).²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KBP/RWP/rho

Ref.: ID# 34171

Enclosure: Submitted documents

cc: Mr. Terry A. Dawson
P.O. Box 6183
Katy, Texas 77491-6183
(w/o enclosures)

²We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). In the event that the department receives another open records request for these documents subsequent to the conclusion of the termination proceedings, you may request another open records decision at that time.